No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHYKEETRA MALTBIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-14446

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHYKEETRA MALTBIA, M.D.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:19-cr-00209-JB-MU-1

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: February 9, 2023

For the Court: DAVID J. SMITH, Clerk of Court

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-14446

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHYKEETRA MALTBIA, M.D.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:19-cr-00209-JB-MU-1

Before NEWSOM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

Dr. Chykeetra Shinnyette Maltbia appeals her convictions for possession with intent to distribute controlled substances. She asserts that the district court erred for three reasons. First, she argues that the district court's exclusion of "good patient care" evidence deprived her of the right to present a complete defense in violation of the Fifth and Sixth Amendments. Second, she argues that the district court erred by not giving the jury a "good faith" instruction. Third, she contends for the first time on appeal that the district court should have instructed the jury that the government is required to prove that Maltbia issued prescriptions without a legitimate medical purpose *and* was acting outside the usual course of medical practice.

Because Maltbia is not entitled to relief on any of her claims, we affirm her convictions. We address each enumeration of error in turn.

I. Background

In February 2020, a grand jury indicted Maltbia with one count of conspiracy to possess with intent to distribute controlled substances in violation of 21 U.S.C. § 846 (Count One); sixteen counts of possession with intent to distribute controlled substances in violation of 21 U.S.C. § 841(a)(1) (Counts Two through Seventeen); and eighteen counts of healthcare fraud in violation of

18 U.S.C. § 1347 (Counts Eighteen through Thirty-Five).[1] Maltbia pleaded not guilty on all counts, and the district court set the case for trial. Before trial, the government moved to dismiss the healthcare fraud claims, and the court granted the motion.

Maltbia is a physician who owned and operated a medical clinic in Mobile, Alabama. At trial, a special agent with the United States Drug Enforcement Administration ("DEA") testified that he became familiar with Maltbia's clinic through an investigation into several individuals for selling "oxycodone 30" prescription pills.[2] He discovered that the individuals selling oxycodone 30 were Maltbia's patients and observed them at Maltbia's clinic. After searching Maltbia's clinic and the electronic data stored on her computers pursuant to a search warrant, he learned that Maltbia regularly prescribed controlled substances to her patients—including oxycodone 30. Further investigation revealed that Maltbia had already signed prescriptions for patients that she was scheduled to see later in the day; that Maltbia charged her patients $300 per visit; that Maltbia's patients "mainly" paid in cash or by credit card; and that Maltbia had issued prescriptions to patients while she was out-of-state on multiple occasions. A DEA

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[1] In August 2019, a grand jury indicted Maltbia with five violations of 21 U.S.C. § 841(a)(1). Later that fall, Maltbia pleaded not guilty on all counts. A grand jury then returned a superseding indictment in February 2020.

[2] Testimony at trial explained that oxycodone 30 refers to the dosage of oxycodone (30 milligrams) and that oxycodone 30 has the "highest street value" for oxycodone.

intelligence analyst testified that 58.7% of Maltbia's patients received at least one prescription of oxycodone 30. And the government's expert witness concluded that Maltbia prescribed opioids without properly assessing patients and that she falsified medical records.

The jury found Maltbia guilty on Count Two and Counts Four through Seventeen.[3] After denying Maltbia's motion for new trial, the district court sentenced her to five years' probation for each count, with each probationary term to run concurrently, and ordered Maltbia to pay a $50,000.00 fine.

Maltbia timely appealed.

II. Discussion

a. *Whether the district court erred by excluding "favorable patient testimony"*

First, Maltbia argues that the district court denied her the right to present a complete defense in violation of the Fifth and Sixth Amendments to the Constitution by excluding "favorable patient testimony." We disagree.

Prior to trial, the government filed a motion *in limine* to exclude testimony from Maltbia's "good patient[s]" during opening statements or "during trial without first making an argument

[3] Maltbia moved for acquittal during trial and at the close of evidence, and the district court granted her motions in part and dismissed Counts One and Three.

outside the jury's presence." The government explained that a common "defense tactic in trials where the defendant is a medical professional is for the defendant to attempt to call 'good patient' witnesses—*i.e.*, patients who will testify that they received proper medical care from the defendant." The government argued that "[w]hile such testimony might appear to be relevant at first blush, 'good patient' testimony is actually impermissible character evidence."

Maltbia opposed the motion, arguing that excluding evidence of good patient care would deprive her of a fair trial and her right to present a full defense under the Fifth and Sixth Amendments.

After a hearing, the district court granted the government's motion and stated that "[a]ny request for the [c]ourt to revisit the issue of admissibility at trial shall occur outside the presence of the jury."

"Whether the exclusion of evidence violated a constitutional guarantee is a legal question reviewed *de novo*." *United States v. Sarras*, 575 F.3d 1191, 1209 n.24 (11th Cir. 2009). And "[i]n assessing a defendant's claims under the Fifth and Sixth Amendments to call witnesses in her defense, . . . [w]e first examine whether [the] right was actually violated, [and] then turn to whether [the] error was harmless." *United States v. Hurn*, 368 F.3d 1359, 1362–63 (11th Cir. 2004) (quotation omitted).

"The Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *United States v. Akwuba*, 7 F.4th 1299, 1312 (11th Cir. 2021) (quotation omitted). But the right to present a complete defense is not absolute; rather, it is subject to reasonable restrictions. *Id.* "[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." *United States v. Mitrovic*, 890 F.3d 1217, 1221 (11th Cir. 2018) (quoting *United States v. Scheffer*, 523 U.S. 303, 308 (1998)). "Such rules do not abridge an accused's right to present a defense so long as they are not 'arbitrary' or 'disproportionate to the purposes they are designed to serve.'" *Id.* (quoting *Scheffer*, 523 U.S. at 308). A trial judge's role as gatekeeper is to "ensure that the factfinder bases its decision only on relevant and reliable information." *Id.* at 1222. Thus, "while a criminal defendant must be given every meaningful opportunity to present a complete defense," "[s]he must [also] comply with the procedural and evidentiary rules designed to facilitate a search for the truth" in doing so. *Id.* (quotation omitted). And, notably, the Supreme Court "has never held that a federal rule of evidence violated a defendant's right to present a complete defense." *Id.* (emphasis omitted).

On appeal, Maltbia contends that the district court's exclusion of testimony related to "good patient care" violated the Fifth and Sixth Amendments by depriving her of the ability to present a complete defense. She relies on *United States v. Hurn*, 368 F.3d 1359 (11th Cir. 2004), to support her argument that "good

patient testimony" had "the potential to 'place the story presented by the [g]overnment in a significantly different light.'"

In *Hurn*, we explained that a district court's exclusion of evidence may violate the Constitution in four circumstances. 368 F.3d at 1363. As relevant here, we stated that "a defendant must generally be permitted to introduce evidence that, while not directly or indirectly relevant to any of the elements of the charged events, nevertheless tends to place the story presented by the prosecution in a significantly different light, such that a reasonable jury might receive it differently."[4] *Id.* Thus, *Hurn* recognizes that defendants have a right to combat "the government's selective presentation of entirely truthful evidence" that can "cast a defendant in an inaccurate, unfavorable light, or make entirely legitimate, normal, or accepted acts appear unusual or suspicious."

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[4] Although not relevant to this appeal, the other three circumstances include:

> First, a defendant must generally be permitted to introduce evidence directly pertaining to any of the actual elements of the charged offense or an affirmative defense. Second, a defendant must generally be permitted to introduce evidence pertaining to collateral matters that, through a reasonable chain of inferences, could make the existence of one or more of the elements of the charged offense or an affirmative defense more or less certain. Third, a defendant generally has the right to introduce evidence that is not itself tied to any of the elements of a crime or affirmative defense, but that could have a substantial impact on the credibility of an important government witness.

Hurn, 368 F.3d at 1363.

Id. at 1366–67. "In these situations, the defendant has the right to introduce additional evidence to dispel this unjustified taint, even if that evidence does not directly or indirectly bear on a particular element of an offense." *Id.* at 1367.

For example, in *United States v. Todd*, 108 F.3d 1329, 1329 (11th Cir. 1997), the defendant was convicted of embezzling from his company's employee retirement fund. To prove "criminal intent" and show that the defendant was "motivated by greed and selfishness to fraudulently deprive the employees of the [p]lan's funds," the government presented evidence that the defendant and his family members who worked at the company received large salaries. *Id.* at 1332–33. We reversed the defendant's conviction, concluding that the district court erred by prohibiting the defendant from introducing evidence that all employees who worked at the company, not just his family members, received large salaries and benefits. *Id.* at 1333–34. We reasoned that such evidence "could have put quite a different spin on the question of Todd's intent and actions" and that "[b]y disallowing the disputed evidence, the district court deprived [the defendant] of a chance to rebut the government's intent argument." *Id.*

Here, Maltbia fails to establish that evidence of good patient care constitutes the type of evidence contemplated by *Hurn* and *Todd*—*i.e.*, evidence that "complete[s] the picture" of the charged crimes. *Hurn*, 368 F.3d at 1366–67. Maltbia argues that "[t]estimony of good patient care whose quality of life has improved after being treated by Maltbia was essential to refuting

the [g]overnment's claim that Maltbia was analogous to a street drug dealer[,] that she was only seeming to make her practice legitimate, and [that] she was not an honest and diligent doctor."[5] But even if evidence of good patient care might have added some additional context, it would not have given the jury a reason in law not to convict. *See United States v. Funches*, 135 F.3d 1405, 1408 (11th Cir. 1998) (affirming a conviction even though some contextual evidence was excluded because "[h]ad the jury heard [the excluded evidence], the jury nonetheless would have lacked a reason in law not to convict"). Indeed, "evidence introduced to 'complete' a potentially misleading story offered by the government is pertinent only when it might color a jury's assessment of the material facts of the case." *Hurn*, 368 F.3d at 1367. Here, Maltbia does not explain how evidence of good care for some patients would change or otherwise affect the material facts that led to her convictions. Accordingly, because "good patient" evidence was not necessary to correct inaccuracies created by the government's evidence or "complete the picture" of the charged crimes, we conclude that the district court's exclusion of

[5] In its opening statement at trial, the government stated: (1) that "[t]he only difference in Maltbia and a street level drug dealer is that she used her medical license to do it" and (2) that "Maltbia and [her stepfather] worked together to make it seem like a legitimate clinic. But you will be able to tell from the undercover videos that it was anything but." Then in its closing argument, the government asserted that "[w]e would not be here today if Maltbia had been a diligent and honest doctor."

"good patient" evidence did not violate Maltbia's constitutional right to present a complete defense.

b. *Whether the district court erred by not giving the jury a good faith instruction*

Next, Maltbia argues that the district court erred by not giving the jury a good faith defense charge. After reviewing for plain error, we conclude that Maltbia fails to carry her burden.

When instructing the jury at the close of trial, the district court explained that under 21 U.S.C. § 841(a)(1) of the Controlled Substances Act ("CSA"), "[f]or a controlled substance to be lawfully distributed or dispensed by prescription, the prescription must have been issued by a practitioner both for a legitimate medical purpose and within the usual course of professional practice." The district court explained that this determination was to be made using an objective—not subjective—standard:

> Whether a prescription was issued in the usual course of professional practice must be evaluated based on an objective standard. Thus, you must not focus on the subjective intent of the prescriber. Rather, your focus must be on whether the controlled substance identified in each count was prescribed by [Maltbia] in accordance with an objective standard of medical practice generally recognized and accepted in the United States.

Maltbia never objected to the instruction.[6]

Months later, Maltbia filed an untimely motion for new trial, explaining that the Supreme Court had granted a petition for a writ of certiorari in *Ruan v. United States*, -- U.S. --, 142 S. Ct. 457 (2021) ("*Ruan II*"), and a consolidated case and that the issues in those cases were "directly applicable" to the legal issues of her case. She contended that the petitions for certiorari addressed "the issue of 'good faith' as a defense to allegations of the nature contained in the indictment against [Maltbia]." Maltbia urged the district court to accept her out-of-time motion and to delay ruling on the motion and conducting sentencing until the Supreme Court decided *Ruan II*. The government opposed her motion, arguing that the motion was untimely, that Maltbia was making these arguments for the first time, and that "a delayed motion for a new trial should not be a substitute for timely objections during trial." The district court denied Maltbia's motion, and Maltbia appealed.

Because Maltbia did not timely file her motion for new trial, we review the district court's denial of the motion for plain error.

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[6] Although the parties and the district court discussed a good faith instruction at the charge conference, the district court ultimately did not give a good faith instruction to the jury—stating that it had "to follow the [then-binding] Eleventh Circuit's law on [the issue]," which required that the "usual course of professional practice" prong be evaluated under an objective standard. Maltbia never requested a good faith instruction at the charge conference and never objected to the district court's conclusion that it was not "an appropriate defense to be instructed to the jury."

See United States v. Little, 864 F.3d 1283, 1289 (11th Cir. 2017). Under plain error review, "[w]e may reverse an error that was plain and that affects [a] defendant's substantial rights, provided it also seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v. Innocent*, 977 F.3d 1077, 1081 (11th Cir. 2020). Importantly, "[t]he party challenging the error bears the burden of proving that [she] had a 'reasonable probability of a different result' absent the error." *Id.* (quoting *Dell v. United States*, 710 F.3d 1267, 1276 (11th Cir. 2013)).

After Maltbia appealed to us, the Supreme Court decided *Ruan II*. A bit of background is helpful.

The statute under which Maltbia was convicted—21 U.S.C. § 841(a)—prohibits the "knowing[] or intentional[]" dispensing of controlled substances "[e]xcept as authorized." Certain controlled substances are "authorized" to be dispensed by prescription if the prescription is made for a "legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 C.F.R. § 1306.04(a). Prior to the Supreme Court's decision in *Ruan II*, we had repeatedly rejected defendants' requests for a good faith jury instruction—specifically, an instruction that a defendant's good faith could be a defense to an allegation that she acted outside the "usual course of professional practice." *See United States v. Ruan*, No. 17-12653, 2023 WL 106451, at *1 (11th Cir. Jan. 5, 2023) ("*Ruan III*") (citing cases). In those cases, we held that the "usual course of professional practice"

prong must be evaluated using an objective standard, not a subjective one. *Id.*

The Supreme Court reversed. *Ruan II*, 142 S. Ct. at 2376. Rejecting our objective standard, the Supreme Court held that § 841(a)'s "knowingly or intentionally" mens rea requirement applies to both the dispensing element *and* to the "except as authorized" clause. *Id.*; *Ruan III*, 2023 WL 106451, at *2. The Supreme Court's holding means that, to obtain a conviction under § 841(a), the "government must prove beyond a reasonable doubt that a defendant (1) knowingly or intentionally dispensed a controlled substance; and (2) knowingly or intentionally did so in an unauthorized manner." *Ruan III*, 2023 WL 106451, at *2; *see also Ruan II*, 142 S. Ct. at 2376. The Supreme Court explained that an objective standard inappropriately imported a civil negligence standard into a criminal prosecution. *Ruan III*, 2023 WL 106451, at *2. "Instead, what matters is the defendant's subjective mens rea." *Id.*

On remand, we held that the district court's denial of the defendants' request for a good faith instruction, which reflected a subjective intent, was error. *Id.* And because "the district court's instruction for the substantive drug charges inadequately conveyed the required mens rea to authorize conviction under § 841(a)," we vacated the defendants' substantive drug convictions under § 841(a). *Id.* at *3.

Turning back to the case at hand, we conclude that Maltbia cannot meet her burden to establish each element of plain error.

Even if Maltbia could meet the first two prongs of the test, she cannot satisfy the third prong.[7] Namely, she cannot satisfy her burden to prove that there is a reasonable probability that she would have obtained a different result but for the error. *Innocent*, 977 F.3d at 1082.

As the party challenging the alleged error, Maltbia bears the burden of persuasion. *See United States v. Monroe*, 353 F.3d 1346, 1352 (11th Cir. 2003) (explaining that plain error review, unlike harmless error review, puts "the burden of persuasion with respect to prejudice or the effect on substantial rights" on the defendant, not the government). And the "burden of showing prejudice to meet the third-prong requirement is anything but easy." *United States v. Rodriguez*, 398 F.3d 1291, 1299 (11th Cir. 2005). She must prove that she had a "reasonable probability of a different result" absent the error. *Innocent*, 977 F.3d at 1082; *United States v. Reed*, 941 F.3d 1018, 1021 (11th Cir. 2019) (explaining that a defendant

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[7] Even though Maltbia fails on the third prong of the plain error test, we note that she could have potentially succeeded on the first two. Although we do not have any language for a good faith instruction to evaluate because none was proposed in this case, we do know that the jury instruction given was erroneous because it used an objective standard, rather than the subjective standard that is now required. *See Ruan II*, 142 S. Ct. at 2376. And "[t]he error was plain because it is evident at the time of appellate review." *Innocent*, 977 F.3d at 1082; *see Henderson v. United States*, 568 U.S. 266, 279 (2013) (explaining that "whether a legal question was settled or unsettled at the time of trial," the second prong of the plain error test is satisfied if an error is plain "at the time of appellate consideration" (quotation omitted)).

"must prove that an error occurred that was both plain and that affected [her] substantial rights").

In the face of this burden, Maltbia makes no argument and presents no evidence that she was prejudiced by the error.[8] *See Monroe*, 353 F.3d at 1352; *see also United States v. Duncan*, 400 F.3d 1297, 1304 (11th Cir. 2005) (concluding that the defendant could not meet his burden of persuasion when he "[did] not point to anything indicating a reasonable probability of a different result" (quotation omitted)). And we decline to construct a prejudice argument for Maltbia from a blank slate. Accordingly, we conclude that Maltbia fails to meet her burden and cannot survive plain error review when she provides no showing of prejudice and makes no attempt to argue that a different result would have occurred absent the error. *See Duncan*, 400 at 1304 (explaining that the defendant bears the burden of "persuasion with respect to prejudice").

c. *Whether the district court erred by giving a disjunctive jury instruction*

At the close of trial, the district court instructed the jury that the government must prove that "the defendant knowingly and intentionally dispensed or distributed or caused to be dispensed or distributed a controlled substance by prescription and [(1)] the prescription was issued not for a legitimate medical purpose *or* [(2)]

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[8] Indeed, Maltbia's brief does not reference "plain error," "prejudice," or "substantial rights." Instead, she largely summarizes the state of the law pre-*Ruan II* and "urges [this] Court to be mindful of the *Ruan* ruling."

the prescription was issued outside the usual course of professional practice." For the first time on appeal, Maltbia argues that the district court erred by not charging the "legitimate medical purpose" and "usual course" "requirements in the conjunctive." After reviewing for plain error, we conclude that Maltbia fails to carry her burden.

Because Maltbia raises this jury instruction issue for the first time on appeal, we review her claim for plain error. *United States v. Guevara*, 894 F.3d 1301, 1309 (11th Cir. 2018). Under plain error review, we may exercise our discretion and correct an unpreserved error where there is (1) an error; (2) the error is plain; (3) the error affects substantial rights; and (4) the error seriously affects the fairness or integrity of the judicial proceedings. *Id.* Maltbia's argument fails on all fronts.

As we explained above, under 21 U.S.C. § 841(a)(1) of the CSA, it is unlawful for a person to knowingly or intentionally distribute or dispense a controlled substance except as authorized. One authorized exception permits licensed doctors to dispense certain controlled substances with prescriptions. 21 U.S.C. § 829(a), (b). The regulations explain that for such a prescription to be effective, it "must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 C.F.R. § 1306.04(a). And we have interpreted this regulation to be disjunctive, meaning that a doctor unlawfully distributes a controlled substance by prescription if (1) "the prescription was not for a legitimate medical purpose" *or* (2)

"the prescription was not made in the usual course of professional practice." *United States v. Abovyan*, 988 F.3d 1288, 1305 (11th Cir. 2021) (quotations omitted) (explaining that "[t]he rule is disjunctive, and a doctor violates the law if he falls short of either requirement"). Indeed, we have repeatedly affirmed jury instructions that were given in this disjunctive format. *See, e.g.*, *id.* at 1305, 1308; *United States v. Joseph*, 709 F.3d 1082, 1094–96 (11th Cir. 2013), *abrogated on other grounds by Ruan III*, 2023 WL 106451, at *1; *United States v. Tobin*, 676 F.3d 1264, 1282–83 (11th Cir. 2012), *abrogated on other grounds by Ruan III*, 2023 WL 106451, at *1. Thus, considering that we have affirmed this jury instruction in the past, and that the Supreme Court did not address it in *Ruan II*, we conclude that no plain error exists.[9] *See United States v. Sanchez*, 940 F.3d 526, 537 (11th Cir. 2019) ("An error cannot be plain unless the issue has been specifically and directly resolved by the explicit language of a statute or rule or on point precedent from the Supreme Court or this Court.").

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[9] We note that our conclusion is limited to the plain error review context. We do not address what impact *Ruan II* may have on this issue, if any, if it is preserved and raised on appeal in a future case.

Additionally, Maltbia argues, in a conclusory manner, that "[t]he phrase 'usual course of professional practice,' when separated from 'medical purpose,' is unconstitutionally vague." Again, Maltbia did not raise this issue below, so it is subject to plain error review. And where we have repeatedly affirmed this disjunctive jury instruction, we cannot say that it was plain error for the district court to give such an instruction. *See United States v. Sanchez*, 940 F.3d 526, 537 (11th Cir. 2019).

Additionally, Maltbia cannot establish the third prong of the plain error test because she fails to argue how she was prejudiced and because she has not demonstrated that the outcome would have been different if a conjunctive instruction, rather than a disjunctive instruction, was given. The government urges us not to "create a prejudice argument from whole cloth" when Maltbia "does not . . . engage [the] heavy burden [of proving she received an unfair trial] on appeal," and we will not do so. Considering that Maltbia bears the difficult burden of persuasion on this point, *see Rodriguez*, 398 F.3d at 1299, we conclude that she cannot survive plain error review when she makes no argument on this prong, *see Duncan*, 400 F.3d at 1304.

III. Conclusion

Because Maltbia is not entitled to relief on any of her claims, we affirm her convictions and the district court's denial of her motion for new trial.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA	§	**JUDGMENT IN A CRIMINAL CASE**
	§	
v.	§	
	§	Case Number: **1:19-CR-00209-JB-MU(1)**
CHYKEETRA MALTBIA, M.D.	§	USM Number: **17701-003**
	§	**Dennis J. Knizley**
	§	Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court

☒ was found guilty on Counts Two and Four through Seventeen on 8/27/2021 after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

Title & Section / Nature of Offense	Offense Ended	Count
21:841A=Cd.F Possession With Intent To Distribute Controlled Substances	12/03/2018	Two
21:841A=Cd.F Possession With Intent To Distribute Controlled Substances	12/03/2018	Four through Seventeen

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

December 13, 2021
Date of Imposition of Judgment

s/JEFFREY U. BEAVERSTOCK
Signature of Judge

JEFFREY U. BEAVERSTOCK
CHIEF UNITED STATES DISTRICT JUDGE
Name and Title of Judge

December 14, 2021
Date

DEFENDANT: CHYKEETRA MALTBIA, M.D.
CASE NUMBER: 1:19-CR-00209-JB-MU(1)

PROBATION

The defendant is hereby sentenced to Probation for a term of FIVE (5) YEARS as to each of Counts Two and Four through Seventeen; said terms to run concurrently.

☒ Special Conditions:

1) the defendant shall pay a fine in the total amount of $50,000, which is due within 30 days. It shall be paid through the Clerk, U.S. District Court.

2) the defendant shall submit her person, house, residence, vehicle(s), papers, [computers (as defined by 18 U.S.C. Section 1030(e)(1)) or other electronic communications or data storage devices of media], business or place of employment, and any other property under the defendant's control to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search in accordance with this condition may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon.
4. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests, thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

5. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
6. ☐ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
7. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
8. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

See Page 4 for the "STANDARD CONDITIONS OF SUPERVISION"

DEFENDANT: CHYKEETRA MALTBIA, M.D.
CASE NUMBER: 1:19-CR-00209-JB-MU(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your probation, you must comply with the following standard conditions. These conditions are imposed because they establish the basic expectations for your behavior while on probation and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. The defendant must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by your probation officer and follow the instructions of the probation officer.
5. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
6. The defendant must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
8. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
9. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
10. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
11. If the probation officer determines that you pose a risk to another person (including an organization/employer), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
12. The defendant shall support his or her dependents and meet other family responsibilities.
13. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

Defendant's Signature _____ Date _____

U.S. Probation Officer's Signature _____ Date _____

DEFENDANT: CHYKEETRA MALTBIA, M.D.
CASE NUMBER: 1:19-CR-00209-JB-MU(1)

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Page 5.

	Assessment	Fine	Restitution
TOTALS	$1,500.00	$50,000.00	$.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. (or see attached) However, pursuant to 18 U.S.C. § 3644(i), all non-federal victims must be paid in full prior to the United States receiving payment.

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Page 5 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- ☒ the interest requirement is waived for the ☒ fine ☐ restitution
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: CHYKEETRA MALTBIA, M.D.
CASE NUMBER: 1:19-CR-00209-JB-MU(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payments of $ 50,000.00 (fine) and $1500.00 (special assessment) due immediately, balance due ☐ not later than _____, or

☐ in accordance with ☒ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☒ Payment of the $50,000.00 fine is to be paid within 30 days from the date of the sentencing hearing.

D ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of $1,500.00 for Counts 2s, 4s, 5s, 6s, 7s, 8s, 9s, 10s, 11s, 12s, 13s, 14s, 15s, 16s and 17s , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

☐ Defendant shall receive credit on her restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
See attached Preliminary Order of Forfeiture entered on 9/3/2021 (doc. 171).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

U.S. District Court
SOUTHERN DISTRICT OF ALABAMA (Mobile)
CRIMINAL DOCKET FOR CASE #: 1:19-cr-00209-JB-MU-1

Case title: USA v. MALTBIA

Date Filed: 08/29/2019

Date Terminated: 12/21/2021

Date Filed	#	Docket Text
12/14/2021	205	ENDORSED ORDER denying 186 Motion for New Trial as to Chykeetra Maltbia M.D. for the reasons stated on the record during the telephone conference held 11/23/2021. Signed by Chief District Judge Jeffrey U. Beaverstock on 12/14/21. (mbp) (Entered: 12/14/2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA, Plaintiff,	*	
	*	19-cr-209
	*	August 27, 2021
vs.	*	Mobile, Alabama
	*	8:19 a.m.
CHYKEETRA MALTBIA, M.D. and LEROY RAY DOTSON, Defendants.	*	

TRANSCRIPT OF JURY TRIAL
VOLUME V
BEFORE THE HONORABLE JEFFREY U. BEAVERSTOCK
UNITED STATES DISTRICT JUDGE

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(Short recess.)

THE COURT: There's one other issue with regard to the instructions that I failed to take up because I only talked about the government's instructions.

09:03:34 Mr. Knizley, you proposed an instruction as well. But do you have anything you want to add on that from what we discussed yesterday?

MR. KNIZLEY: No, sir.

THE COURT: Okay. Well, then, I'm not going to give

09:03:46 that instruction for the reasons that we discussed yesterday.

MR. KNIZLEY: Yes, sir.

MR. BODNAR: Yes, Your Honor.

THE COURT: Okay. The revised instructions are being printed now. Should be ready in just a moment.

09:03:58 Did y'all have the chance to talk about the Paul Short charts?

MS. GRIFFIN: We have, Your Honor. We have not reached an agreement.

I would like to add to what I previously mentioned

09:04:08 to the Court and that is that we do believe it is inextricably and 404(b). And we would ask the Court for a finding that they come in and go to the jury; that the notice was sufficient because they were previously provided all this in discovery.

09:04:23 THE COURT: Okay.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA, Plaintiff,	*	19-cr-209
	*	August 26, 2021
vs.	*	Mobile, Alabama
	*	9:01 a.m.
CHYKEETRA MALTBIA, M.D. and LEROY RAY DOTSON, Defendants.	*	

TRANSCRIPT OF JURY TRIAL
VOLUME IV
BEFORE THE HONORABLE JEFFREY U. BEAVERSTOCK
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by OFFICIAL COURT REPORTER, Qualified pursuant to 28 U.S.C. 753(a) & Guide to Judiciary Policies and Procedures Vol. VI, Chapter III, D.2. Transcript produced by computerized stenotype.

So I would again just urge your continued discretion not to discuss the case in any way and we will see you tomorrow morning. Thank you very much. Have a good night.

(Jury excused.)

14:57:32 (In open court. Jury not present.)

COURTROOM DEPUTY: Please be seated.

(In open court. Jury not present.)

THE COURT: Okay. So, Mr. Bodnar, you indicated you're going to have your assistant email the instructions?

14:58:00 MR. BODNAR: I'm sorry. I didn't hear what you said, Your Honor.

THE COURT: Sure. Your office is going to email the revised instructions? And I guess you need to revise them further now based on the Court's rulings.

14:58:12 MR. BODNAR: I do, Your Honor. I've got obviously the shell of it done. I will get -- I should be able to, depending what time we get out of here, have it by 5:00 p.m. to the Court and to everybody.

THE COURT: Okay. Mr. Knizley, I think you had one

14:58:38 charge.

MR. KNIZLEY: Yes, sir. Judge, the jury charge I had submitted is based upon the same argument I was making in the *Joseph* case. And in that case, the Court stated that violation of specific CFR statute, which is, I believe,

14:59:17 identical to the Alabama board of medical regulations statute

as in regards to the date of signing of a prescription, is not, per se, outside the usual course of professional practice. We're asking for that jury instruction.

THE COURT: Okay. Mr. Bodnar, have you had a chance to consider that yet?

14:59:35

MR. BODNAR: I have, Your Honor.

THE COURT: Okay.

MR. BODNAR: So we agree that, obviously, it's not strict liability. I know -- we know it's not strict liability because 21 USC 841(a)(1) requires mens rea knowledge and intent which we just dealt with. Also, if you actually read that portion of *Joseph*, it's not a holding by the Court or any sort of pronouncement on the law. It is, at best, a comment in dicta. It is very brief, and I will read it, Your Honor.

14:59:44

15:00:05

Although we agree with Green and Mack, who are the defendants or the appellants in this case, that a violation of 1306.05 does not constitute a per se violation of Section 841, the jury was entitled to infer, based on Green's pre signing and predating of the prescriptions and Mack's delivery of those prescriptions to Green's patients, that they violated the Act. And that's referring to the Controlled Substances Act.

15:00:22

So I think -- while that word, per se, is used in the *Joseph* opinion, it's not saying anything different than

15:00:38

the fact that it's our burden to show knowledge and intent.

I think it makes it very confusing for the jury because no one is alleging this is a strict liability offense, Your Honor.

15:00:54 THE COURT: Okay. Well, and, in fact, it's not the only fact or factor that is in play. I mean, we also have the notes that are signed after the fact suggesting that Dr. Maltbia was there in the examination room on that day.

MR. BODNAR: Correct.

15:01:10 THE COURT: So, Mr. Knizley, I don't find that this is a per se kind of situation. It's not a technical violation only where, you know, like, say, for example, the DEA license had expired or something like that. It's more than just the technical violation that's referenced.

15:01:34 MR. KNIZLEY: Judge, I totally agree with what the Court is saying. But I think the issue is the jury could consider the signing of the office note, the encounter note that may -- the government may argue was untrue. That's something they can consider. But what they should not do is

15:01:59 simply say because there may be evidence of a violation of a regulation that that is conclusory or, per se -- in and of itself -- conclusive that they have committed -- they have violated 841.

And I think that's -- and I think you're going to

15:02:22 hear argument that says he violated -- he violated the -- she

violated the regulation and, therefore, that's outside the normal course of professional practice. And that's not the law. I think the law here is that -- that it is not per se. It has to be that can be considered along with other facts in the case for you to make a determination of whether Dr. Maltbia was -- committed acts outside the normal course of professional practice.

THE COURT: Mr. Bodnar, do you have anything else you want to add?

MR. BODNAR: That's exactly where mens rea comes in; if she's knowingly and intentionally violating regulations according to evidence that was in from the experts, then that is outside the usual course of professional practice. And that's for the jury to decide whether or not those actions -- one, were they knowing and intentional? And if they were, does that constitute a prescription outside the usual course? If so, then that is illegal prescription.

THE COURT: I think that's what Dr. Furr testified to.

MR. BODNAR: Correct.

THE COURT: Okay. Well, I'm -- this isn't the charge conference per se. I don't have the rest of your charges. But I'm going to -- I don't think I'm going to give this charge. But I will let you think about it some more this evening, Mr. Knizley.

And once I see the proposal from the government regarding the balance of the charges -- and I would say that most of the charges that were submitted previously by the government are standard instructions.

15:03:52 So it's -- now we know which ones apply, which ones don't based on who has testified in the case. But I do think the substantive instructions are -- that's what we're going to primarily discuss during the -- to the -- in terms of a charge conference.

15:04:12 MR. BODNAR: Yes, Your Honor. You had mentioned something, too, about the interplay of good faith as well. Is there something that we could at least be thinking of so we know where your position is on that so we know what, if anything, we need to prepare for tonight?

15:04:26 THE COURT: Well, no. I mean, we have to follow the Eleventh Circuit's law on it. The Eleventh Circuit I think is -- Dr. Ruan has proceedings before the Supreme Court because of the -- what is represented as a split in the circuits but it might be properly described as more than just

15:04:48 a split. I mean, the Eleventh Circuit has a very different approach than the rest of the -- well, most of the rest of the judiciary.

MR. BODNAR: And our position on it -- as I was building these back in June before the original trial, I

15:05:04 spoke extensively with the individual at the solicitor

general's office that's handling the opposition which I believe has already been filed in *Couch/Ruan* to make sure that my position -- we did take a different position here than we did in *Couch/Ruan*.

15:05:21 In *Couch/Ruan*, the Eleventh Circuit said yes; the instruction Judge Granade gave was correct. The solicitor general office's position before the Supreme Court is it's correct of what's in the Eleventh Circuit and does note the possible interplay with the good faith. And that's why we 15:05:40 included that here, Your Honor, even though that does go, presently, beyond what the Eleventh Circuit requires.

THE COURT: Okay. And so, Mr. Knizley, did you have an opportunity to look at that proposed instruction at all?

MR. KNIZLEY: I did not. His proposed instruction 15:05:57 or yours, Judge?

THE COURT: His. His.

MR. KNIZLEY: I did not. I will look at it. But has the Court got -- same question I think Chris had. What is the Court's inclination, if you can possibly share it with 15:06:09 us, in respect to that charge?

THE COURT: Well, I mean, the Court is bound to follow the law of the Eleventh Circuit. And so the Eleventh Circuit has said the instruction that Judge Granade gave was correct.

15:06:21 MR. BODNAR: Yes.

THE COURT: And, honestly, I haven't looked at your proposed instruction versus the instruction Judge Granade gave to harmonize that. And so you're telling me it's different. Do you want to tell me --

15:06:36 MR. BODNAR: Yes. So it's different in this respect, Your Honor: The Eleventh Circuit said Judge Granade is correct. And in the -- and it's very clear in the Eleventh Circuit that it is an objective standard for outside the usual course of professional practice. Where some of the 15:06:51 other circuits differ is if there is a good faith defense put on -- and the bar for getting good faith instruction is low.

And the way that other circuits have merged those and kind of what the solicitor general is arguing before the Supreme Court is that if a defendant is entitled to a good 15:07:13 faith instruction with regard to outside the usual course, then the jury can take into account the defendant's subjective belief if they -- if the jury can assess subjectively whether the defendant was attempting to meet the objective standard. So that's where it's slightly different.

15:07:33 It still is an objective standard but, if good faith comes into play, then the jury can assess whether or not she in good faith was attempting to meet the objective standard.

THE COURT: Okay. That's clear as mud.

MR. BODNAR: Your Honor, I agree. The Eleventh 15:07:54 Circuit is more clear because it is a clear objective

standard.

THE COURT: Right. Well, and I just have, generally speaking, concerns about using terms like objective and subjective with the jury because you could have that discussion with lawyers and they would still -- you would have to talk slow while some of them worked it out. All right. Subjective. Okay. That's me. Objective that's, you know, whatever.

15:08:08

I'm just not sure that that's -- you know, maybe we can express it in a way that -- I read your proposed instruction and just when I read through it the first time, it occurs to me that it might be helpful to the jury to, like, put it in English.

15:08:24

MR. BODNAR: I will work on that. I do think, though, that we have to -- from the United States' perspective, have to go from the position that the jury does have to be told it is an objective standard, particularly with *United States versus Abovyan*, A-B-O-V-Y-A-N, 988 --

15:08:42

THE COURT: That's the case from this year.

MR. BODNAR: Yes. The one from this year that relies on *Ruan* which further states that the appropriate focus is not subjective intent of the doctor but, rather, rests upon whether the physician prescribed medicine in accordance with the standard of medical practice generally recognized and accepted in the United States. And that

15:08:59

15:09:14

follows right after the discussion it has to clearly be an objective standard; whereas, medical necessity is a subjective standard because you do look at what the doctor thought was medically necessary.

15:09:27 THE COURT: Let me ask a question that maybe cuts through it a little bit. Is there any evidence one way or the other about Dr. Maltbia's subjective intent?

MR. BODNAR: I don't think there is. So I don't think that she's entitled to a good faith instruction.

15:09:46 THE COURT: Mr. Knizley, are we having an academic discussion?

MR. KNIZLEY: Obviously, there was no evidence presented in this case -- in our side of the case.

MR. ARMSTRONG: Judge, I think where you can get it

15:09:59 is they were saying if you look at the medical chart issue that they argued -- their witness, Dr. Furr, says that it is -- it came out of thin air and that it's inappropriate to have that in there; whereas, I think the jury has an understanding from Mr. Priest and from Dr. Harrison that

15:10:25 sometimes those things are just carryovers and they're printed in.

And so it's not necessarily a physician who is intentionally leaving or fabricating information in those charts and in those records. It is something that just kind

15:10:43 of occurs whenever you repopulate the next month's patient

visit. And that that was not something that was an objective or intentional act.

MR. KNIZLEY: Of course, Judge, that's on the issue of falsification of the record.

15:11:01 THE COURT: Yeah. Right. No. I'm talking about a good faith belief that the prescriptions were in the usual course of medical -- that the way in which they were signed -- I just don't think there's any evidence one way or the other.

15:11:15 There's just evidence that prescriptions were printed on this day; Dr. Maltbia left on this day; prescriptions were issued; and Dr. Maltbia returned to the country; and then, the day after that, the charts were updated and signed. And the signed prescriptions.

15:11:35 So that's the circumstance -- the pieces of circumstantial evidence that link together to form evidence that the jury can consider.

I didn't hear any evidence about -- that would support a good faith defense, though. I don't think. That's

15:11:50 what I'm asking. And if you want to think about it and we talk about it first thing in the morning --

MR. KNIZLEY: I do, Judge. But I do think that goes back to we have a regulation that says -- and a CFR that says you must sign the prescription the same day it's dated. We

15:12:10 have that.

THE COURT: Right.

MR. KNIZLEY: And the Eleventh Circuit has said -- I know Chris would argue it's dicta and everything else. But they say that is, per se, not outside the course. Now, I
15:12:22 understand. And then we have Dr. Furr saying, well, but I say it is and I'm part of the standard in the community. And we have -- but I just -- it's not per se though just that that, in and of itself, cannot be an instruction that that's outside the normal course.

15:12:41 THE COURT: Well, but that still is not the question of a good faith defense.

MR. KNIZLEY: No, sir, it's not. No, sir.

THE COURT: Okay. And I've told you I'm going to look at your proposed instruction in light of the rest of the
15:12:51 instructions. But I -- what I -- where I'm getting to is we've had an interesting discussion about the Eleventh Circuit approach to good faith defense. I just don't think that that instruction is supported by the evidence in this case.

15:13:06 MR. KNIZLEY: I would have to agree with the Court's assessment as to the truth or falsity of the record. But as to the signing, I would have to -- tomorrow morning, I will see if I can give you something that may -- or whenever you want it -- to indicate that. I can't right here.

15:13:22 THE COURT: I will give you the opportunity to

weave. But I'm telling you I'm not thinking that that's an appropriate defense to be instructed to the jury. But I will give you a chance to just let it cogitate and submit some proposed instructions.

15:13:47 So my suspicion is the United States isn't going to put that good faith defense part in their substantive proposed charge. Maybe they are.

MR. BODNAR: Correct, Your Honor. We will not.

THE COURT: So if you want to argue for it, you will

15:13:59 need to figure out how you want to suggest it.

MR. KNIZLEY: Yes, sir.

THE COURT: Okay. So the jury is going to be here at 9:00 for closing arguments. So why don't we say 8:15 --

MR. KNIZLEY: Yes, sir.

15:14:15 THE COURT: -- to talk about it?

MR. KNIZLEY: Yes, sir.

MR. BODNAR: Yes, Your Honor.

MR. ARMSTRONG: Judge, the only other thing that I was going to ask about was the -- how the indictment will be

15:14:23 obviously redacted to go to the jury.

THE COURT: So we just will need to further redact it.

MR. ARMSTRONG: Right. Not only that. But medical necessity aspect of it; that's --

15:14:40 MR. KNIZLEY: That stays in there.

MS. HEISTERHAGEN: No. That stays in.
MR. ARMSTRONG: They left that in?
MR. KNIZLEY: Absolutely. Please.
THE COURT: Anything else?
15:14:50 MR. KNIZLEY: No, sir.
THE COURT: All right.
MR. JONES: Judge, we will be excused?
THE COURT: Yes, sir.
MR. JONES: Mr. Dotson and I?
15:14:56 THE COURT: You are.
MR. JONES: We don't have to be here tomorrow?
THE COURT: You are.
DEFENDANT DOTSON: Thank you, Your Honor.
THE COURT: United States, anything else?
15:15:04 MR. BODNAR: Not from the United States, Your Honor.
THE COURT: All right. Thanks.
MR. BODNAR: Thank you, Your Honor.
(The Proceedings were recessed at approximately 3:15 p.m. on August 26, 2021.)